

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

Case Number: 1:12-cv-00257-JB-LFG

LARRY GOLDSTONE, CLARENCE G. SIMMONS,
III, and JANE E. STARRETT,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

SEC v. Syron is readily distinguishable from this case. In *Syron*, the SEC alleged, and the Court accepted for purposes of deciding the motion to dismiss, that Freddie Mac's disclosures were ambiguous, obscuring between \$135 billion and \$238 billion in subprime MBS exposure. No. 11 Civ. 9201, 2013 WL 1285572, at *4, 17 (S.D.N.Y. Mar. 28, 2013) (statements “reinforce[ed]...misimpress[ions]” about risk to investors).

This case bears no resemblance to *Syron*. Here, the SEC challenges the validity of Thornburg's other-than-temporary impairment (“OTTI”) analysis. *See, e.g.*, Compl. ¶¶ 8, 50-56, 71. Unlike the factual and readily verifiable disclosures in *Syron*, the OTTI-related disclosures here were statements of *opinion* reflecting a complex, subjective and forward-looking accounting judgment. To establish that Thornburg's OTTI disclosures were misleading, Plaintiff must show that the OTTI judgment was both objectively and subjectively false.¹ There was no such issue in *Syron*.

In addition, Thornburg's Form 10-K made crystal clear not only the company's unrealized losses (approximately \$428 million), but also the associated risks, disclosing, among

¹As set forth in Defendants' briefing on their motions to dismiss, the Complaint's allegations in this regard do not state a claim under the securities laws. *See* [Doc. 35 at 43-47.]

other things, (1) Thornburg's diminished liquidity as a result of meeting margin calls "in excess of \$300 million" in the two weeks preceding the 10-K filing, (2) the risk of receiving additional margin calls Thornburg could not repay, and (3) the possible "need to sell assets under adverse market conditions or at losses[.]" *See* Form 10-K (Feb. 28, 2008), [Doc. 37, Ex. 2 at 36-37, 48-49]. Unlike in *Syron*, these risks were so starkly conveyed to the market that Thornburg's stock price immediately declined 18% and repo lenders reacted by issuing \$157,500,000 in margin calls the very day the 10-K was filed. *See* [Doc. 35 at 21-22]; Compl. ¶¶ 9, 41, 91.

Contrary's to Plaintiff's unsupported characterizations, this is not a case of "half-truths" or understating risks. *Syron* is inapposite and lends no support to Plaintiff's speculative claims.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 29, 2013, Defendants' Response to Plaintiff's Notice of Supplemental Authority was electronically filed with the Clerk of Court using the CM/ECF system that will send notification of such filing to all counsel of record.

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